(4)

No. 04-1163

MAY 19 2005

IN THE SUPREME COURT OF THE UNITED STATES

MAY TERM, 2005

RANDALL G. STEPHENS

Petitioner,

v.

UNION CARBIDE CORPORATION ET. AL., DR. WILLIAM H. JOYCE AND JUDGE JANET R. BURNSIDE,

Respondents.

ON PETITION FOR A EXTRAORDINARY WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

# PETITION FOR REHEARING

RANDALL G. STEPHENS,
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I. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial ground not previously presented in the Petition for

a Extraordinary Writ of Certiorari, to wit, (1) the Cuyahoga County Court of Common Pleas Ohio Docket Sheet shows the Journal Entry of Judge Janet R. Burnside on February 4, 1999 falsifying the Docket Sheet in case number CV - 98 - 368818 as follows:

"Plaintiff's Motion for leave to file motion for summary judgment is denied; Plaintiff's motion for summary judgment filed 01/28/99 is hereby stricken from the docket as it was filed without leave," (See attached Docket Sheet CV - 98 - 368818 on page 2 Date of entry 2/4/99) constitutes criminal conduct within the meaning of Title 18 United States Code Section 2071(b); and (2) this fact properly should be considered in this Court's

determination of Judge Janet R. Burnside, being a elected public official of full age and sound mind, willfully and voluntarily being first duly sworn and under oath of the Ohio Constitution and the United States Constitution to execute and discharge, all and singular the duties as said Judge to enforce the laws of this land but yet entered into and journalized in the Cuyahoga County Court of Common Pleas Ohio Docket Sheet her voluntarily free deed and act of actual intent and with malice by falsifying the Court's Docket Sheet which is a prerequisite to recovery of punitive damages in the constitutional sense and thereby a violation of substantive due process ..... ii

II. The Court should consider and grant

this Petition for Rehearing because the case of New York Times Co. v. Sullivan 376 U. S. 254 (1964) at page 267 constitutes an "intervening circumstance[s] of . . . substantial effect," in that decision underscored as follows: His privilege of "fair comment" for expressions of opinion depends on the truth of the facts upon which the comment is based. Unless he can discharge the burden of proving truth, general damages are presumed, and may be awarded without proof of pecuniary injury. Judge Janet R. Burnside's decisions and orders must be impartial as to the matters within her jurisdiction. (See attached Docket Sheets of the Cuyahoga County Court of Common Pleas in Cases numbered CV - 93 - 249145; CV - 98 - 368818 and CV

- 99 - 383935), all within Judge Burnside's jurisdiction of the Cuyahoga County Court of Common Pleas Ohio.

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Reasons For Granting The Petition For Rehearing

1. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial ground not previously presented" in the Petition for a Extraordinary Writ of Certiorari, to wit, (1) the journal entries in the Court's Docket Sheets of the Cuyahoga County Court of Common Pleas Ohio in cases numbered CV - 93 - 249145; CV - 98 - 368818 and CV - 99 - 383935 shows that the conduct of Judge Janet R. Burnside constitutes criminal conduct within the meaning of Title 18 United States Code Section 2071(b); and (2) this fact properly should be considered in this Court's determination as to due physical harm to petitioner "intentionally and with malice" in the constitutional sense and thereby a violation of substantive due process.

One permissible ground for a petition for rehearing of and order denying a petition for extraordinary writ of

certiorari is a "substantial ground not previously presented." Supreme Ct. Rule 44(2). As will be fully set forth below, a substantial ground not presented in the Petition for a Extraordinary Writ of Certiorari is presented herein, and provides further and compelling ground for this Court to grant the extraordinary writ of certiorari in this case.

In Point III of the Petition for Extraordinary Writ of Certiorari, Petitioner asserted that the undisputed facts in the Cuyahoga County Court of Common Pleas Ohio Docket Sheet of the Court's Journal entries by Judge Janet R. Burnside in this case (1) had a personal interest in the outcome of the Court's proceedings in case number CV - 99 - 383935 and the subsequent litigation due to the fact that the falsifying of the Courts' Docket Sheet. In light of the undisputed fact of her prior direct involvement in case CV - 98 - 368818 (See attached Docket Sheet CV - 98 - 368818 on page 2, Date of entry 2/4/99), (2) failed to disclose her personal involvement in the matter in controversy to the

petitioner during the Pre Trial Hearing for Summary Judgment (See attached Docket Sheet CV - 98 - 368818 on page 2, Date of entry 2/11/99) , (3) intentionally discarded the Worker's Compensation Administration Appeal into the Cuyahoga County Court of Common Pleas Ohio case number CV - 93 - 249145 which appeal was dismissed with prejudice due to the fact that the Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., refusal to comply with Ohio Revised Code Section 4123.35(B), which acts are contrary to Ohio Law.

Ohio Revised Code Section 4123.35(B) reads in pertinent part as follows:

"Such employers and publicly owned utilities who abide by the rules of the administrator and who may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical,

nursing and hospital attention and services and medicines, and funeral expenses, and compensation benefits equal to or greater than as provided. All employers granted the privilege to pay compensation directly shall demonstrate sufficient financial and administrative ability to assure that all the obligations under this section are promptly met," the matter in controversy that had been the subject of the Court's Proceedings, and (4) the Court' Docket Sheets and Journal Entry of Judge Janet R. Burnside in dismissing cases number CV - 98 - 368818 without prejudice and finally dismissing case number CV - 99 - 383935 with prejudice under Ohio Rule of Civil Procedure 12(B)(1) lack of jurisdiction over the subject matter at the request of the Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., during the pending of litigation arising out of the matter in her jurisdiction. (See attached Docket Sheets in cases CV - 93 - 249145; CV - 98 - 368818 and CV - 99 - 383935). It was further asserted that these undisputed

facts were overlooked by the courts below and, taken together, are so manifestly arbitrary and intentional and with malice as to give rise to a violation of substantive due process and as to warrant this Court's intervention.

To the foregoing list I add, in this Petition for Rehearing, the further point that the District Court never addressed the above issues which constitutes criminal conduct within the meaning of Title 18 United States Code Section 2071(b). As set forth below, the fact that Judge Janet R. Burnside's acts constitutes criminal conduct is significant as an indication that Judge Janet R. Burnside's conduct is intentional and with malice in the constitutional sense, Title 18 United States Code Section 2071(b) provides:

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined

under this title or imprisoned not more than three years, or both; and shall forfeit his or her office and be disqualified from holding any office under the United States.

With this as background, I turn to this Court's substantive due process doctrine of the United States Constitution Article IV Section 1. The Full Faith and Credit Statute provides in relevant part that:

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

Thus Judge Janet R. Burnside's journal entries admitted intentional conduct that plainly falls within the statutory proscription that criminalizes her acts of intentionally falsifying of the Court's Docket Sheet. This Court has

recognized" time and again that the touchstone of due process is protection of the individual against arbitrary action of the Government."

District Court dismissed Petitioner's motion for reconsideration based on it memorandum, Opinion and Order as follows: "Further, legal conclusions alone are not sufficient to present a valid claim, and this court is not required to accept unwarranted factual inferences." (See attached United States District Court Northern District of Ohio Cleveland Docket Sheet case number 1:03 - cv -01483 presiding Judge Ann Aldrich on page 3 entry number 11, Dated 09/04/2003).

Federal Rule of Civil Procedure 52(a) provides in all, actions tried upon facts without a jury or with an advisory jury, the court shall find the facts specially and state separately in conclusions of law thereon, and judgment shall be entered pursuant to rule 58; and in granting or refusing

interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court.

The Court of Appeals for the Sixth Circuit decision and Order of Alice M. Batchelder, Circuit Judge Julia S. Gibbons, Circuit Judge and Deborah L. Cook, Circuit Judge reads in pertinent part as follows:

"Only issues regarding the order denying reconsideration may be raised on appeal" (See attached Docket Sheet on page 4, Date of entry 2/5/04).

"Because the motion for reconsideration may be treated as a Fed. R. Civ. P. 60(b) motion for relief, the notice of appeal was timely filed from the denial of that motion."

"Federal Rule of Civil Procedure 60(b) provides (1)

mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. "

In the case of Van Skiver v. United States 952 F. 2d 1241, 1243 (10th. Cir. 1991) on page 1244 second paragraph reads as follows: "Rule 60(b)(6) has been described by this court as a grand reservoir of equitable power to do justice in a particular case."

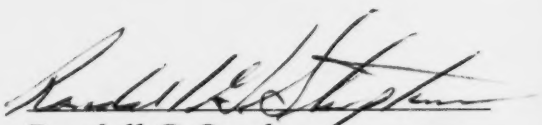
United States Court of Appeals for the Sixth Circuit Docket Sheet reads as follows: MANDATE ISSUED. (See attached Docket Sheet on page 6, Date of entry 11/26/04).

## CONCLUSION

It is clear from the evidence, the facts and the law in this case that reasonable minds can come to but one conclusion, and that conclusion is as follows: The Petition for Rehearing should be granted in good faith and without delay.

May 19, 2005 A. D.

Respectfully submitted by,



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## SUPREME COURT RULE 44(2)

Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). The certificate shall be bound with each copy of the petition. The Clerk will not file a petition without a certificate. The petition is not subject to oral argument.

CERTIFICATON OF SERVICE

I Randall G. Stephens on May 19, 2005 placed in the care of the United States Postal Service the original and Forty-one copies of my Petition For Rehearing addressed to William K. Suter, Clerk of Court of the Supreme Court of the United States, Washington, D. C. 20543-0001.

Three copies of by Petition For Rehearing addressed to Attorney Jeffrey J. Wedel, of Squire, Sanders & Dempsey 4900 Key Tower 127 Public Square Cleveland, Ohio 44114-1304.

Three copies of my Petition For Rehearing addressed to Attorney Gregory T. Hoffpauir, of Montgomery, Rennie & Jonson 36 East Seventh Street, Suite 2100 Cincinnati, Ohio 45202.

May 19, 2005 A. D.

Respectfully submitted by,

Randall G. Stephens,
Petitioner Pro se
3434 East 117th. Street
Cleveland, Ohio 44120-4308
(216) 491-8566

STATE OF OHIO )
) SS:
COUNTY OF CUYAHOGA )

PETITIONER'S AFFIDAVIT IN SUPPORT OF

PETITION FOR REHEARING

I Randall G. Stephens, being of full age and sound mind willfully and voluntary, being first duly sworn and under oath depose and state by these presents do make and constitute as follows:

KNOW ALL MEN AND WOMEN BY THESE PRESENTS: That I am the Petitioner in the above caption case, a Black Male of African ancestry, born August 7, 1951 at 10:15 A. M.,

in the United States of America, State of Ohio County of Cuyahoga and City of Cleveland. A registered voter, meeting all qualification as being a bona fide citizen of this country, placed in the care of the United States Postal Service my Petition For Rehearing this Nineteenth (19th), day of May, 2005 A. D.

That I did certify through the United States Postal Service, my Petition For Rehearing as required by law and paid my filing fees of Two Hundred ($200.00), Dollars money order number 45 - 098495275. I, will testify to the above evidence, facts and the law, that are stated in my Petition For Rehearing, in any Court of law.

Affiant further sayeth naught.

May 19, 2005 A. D.

Respectfully submitted by,

Randall G. Stephens,
Affiant
3434 East 117th Street
Cleveland, Ohio 44120-1308

Sworn to and Subscribed Before me in and for said County of Cuyahoga and State of Ohio, this nineteenth (19th), day of May, 2005 A. D., hereunto subscribed my name below and caused the Great Seal of the State of Ohio to be affixed on this instrument.

HOMER R. JOHNSON
Notary Public, State of Ohio, Cuyahoga County
My Commission Expires Oct. 19 2008.

My Commission Expires _____.

(Seal)

( Notary Public)

BEST AVAILABLE COPY